

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

**In the Matter of the Accusation
Against:**

ANDREW LEWIS KOMINSKY, M.D.

Case No. 800-2018-042659

**Physician's and Surgeon's
Certificate No. A80174**

Respondent

DECISION

**The attached Stipulated Surrender of License and Order is hereby
adopted as the Decision and Order of the Medical Board of California,
Department of Consumer Affairs, State of California.**

This Decision shall become effective at 5:00 p.m. on June 6, 2019.

IT IS SO ORDERED May 30, 2019.

MEDICAL BOARD OF CALIFORNIA

By: 

**Kimberly Kirchmeyer
Executive Director**

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 GREG W. CHAMBERS
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4 State Bar No. 237509
455 Golden Gate Avenue, Suite 11000
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Attorneys for Complainant
7

8 **BEFORE THE**
9 **MEDICAL BOARD OF CALIFORNIA**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 800-2018-042659

13 **ANDREW LEWIS KOMINSKY, M.D.**
14 **1382 Roy Road**
Bellingham, WA 98229

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

15 **Physician's and Surgeon's Certificate No. A**
16 **80174**

17 Respondent.

18
19 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
20 entitled proceedings that the following matters are true:

21 **PARTIES**

22 1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board
23 of California (Board). She brought this action solely in her official capacity and is represented in
24 this matter by Xavier Becerra, Attorney General of the State of California, by Greg W. Chambers,
25 Deputy Attorney General.

26 2. Andrew Lewis Kominsky, M.D. (Respondent) is representing himself in this
27 proceeding and has chosen not to exercise his right to be represented by counsel.
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3. On or about September 1, 2016, the Board issued Physician's and Surgeon's Certificate No. A 80174 to Andrew Lewis Kominsky, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 800-2018-042659 and will expire on September 30, 2020, unless renewed.

JURISDICTION

4. Accusation No. 800-2018-042659 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 27, 2018. Respondent timely filed his Notice of Defense contesting the Accusation. A copy of Accusation No. 800-2018-042659 is attached as Exhibit A and incorporated by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read, and understands the charges and allegations in Accusation No. 800-2018-042659. Respondent also has carefully read, and understands the effects of this Stipulated Surrender of License and Order.

6. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at his own expense; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

8. Respondent admits the truth of each and every charge and allegation in Accusation No. 800-2018-042659, agrees that cause exists for discipline and hereby surrenders his Physician's and Surgeon's Certificate No. A 80174 for the Board's formal acceptance.

9. Respondent understands that by signing this stipulation he enables the Board to issue an order accepting the surrender of his Physician's and Surgeon's Certificate without further process.

CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and surrender, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Surrender of License and Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

12. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Order:

ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A 80174, issued to Respondent Andrew Lewis Kominsky, M.D., is surrendered and accepted by the Board.

1. The surrender of Respondent's Physician's and Surgeon's Certificate and the acceptance of the surrendered license by the Board shall constitute the imposition of discipline against Respondent. This stipulation constitutes a record of the discipline and shall become a part of Respondent's license history with the Board.

2. Respondent shall lose all rights and privileges as a Physician and Surgeon in California as of the effective date of the Board's Decision and Order.

Exhibit A
Accusation No. 800-2018-042659

1 XAVIER BECERRA
Attorney General of California
2 MARY CAIN-SIMON
Supervising Deputy Attorney General
3 GREG W. CHAMBERS
Deputy Attorney General
4 State Bar No. 237509
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 510-3382
6 Facsimile: (415) 703-5480
Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO August 27 2018
BY: [Signature] ANALYST

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

Case No. 800-2018-042659

Andrew Lewis Kominsky, M.D.
1382 Roy Rd.
Bellingham, WA 98229-9323

A C C U S A T I O N

Physician's and Surgeon's Certificate
No. A 80174,

Respondent.

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about September 1, 2016, the Medical Board issued Physician's and Surgeon's Certificate Number A 80174 to Andrew Lewis Kominsky, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2020, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

4. Section 2004 provides that the Board shall have the responsibility for the enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the Board deems proper.

6. Section 2305 of the Code states:

"The revocation, suspension, or other discipline, restriction or limitation imposed by another state upon a license or certificate to practice medicine issued by that state, or the revocation, suspension, or restriction of the authority to practice medicine by any agency of the federal government, that would have been grounds for discipline in California of a licensee under this chapter shall constitute grounds for disciplinary action for unprofessional conduct against the licensee in this state."

7. Section 141 of the Code states:

"(a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.

"(b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a

1 disciplinary action taken against the licensee by another state, an agency of the federal
2 government, or another country."

3 **CAUSE FOR DISCIPLINE**

4 **(Discipline, Restriction, or Limitation Imposed by another State)**

5 8. Respondent is subject to disciplinary action under sections 2305 and 141 of the Code
6 in that on or about March 14, 2018, the Washington Medical Quality Assurance Commission
7 (Washington Board) adopted a Stipulated Findings of Fact, Conclusions of Law, and Agreed
8 Order (Agreed Order), attached as **Exhibit A** and incorporated herein.

9 9. The Agreed Order sets forth allegations regarding Respondent's relationship with a
10 patient. The Agreed Order provides that Respondent admits all of the allegations are true. Among
11 the allegations admitted by Respondent as true are the following:

- 12 A. In 2011, Patient A, a 28-year old woman, was diagnosed with metastatic stage 4
13 breast cancer. Respondent was Patient A's primary oncologist beginning in 2011,
14 until she entered hospice after a relapse in late 2015. Patient A died in 2016.
- 15 B. Shortly after Patient A's death, "the person serving as Patient A's durable power of
16 attorney" reported to Respondent's employer, a hospital, that Patient A's phone
17 contained text messages and voicemails to and from Respondent. Many of the
18 messages contained sexually suggestive and explicit language. The messages also
19 exposed multiple meetings outside the clinical setting. One text message referred to
20 being "showered with gifts." The hospital conducted an investigation and terminated
21 Respondent on May 10, 2016.
- 22 C. From 2013 to 2015 Respondent had an inappropriate relationship with Patient A.
- 23 D. Respondent talked with Patient A through text messages, and many of the text
24 messages were flirtatious and contained sexual content. The hospital collected
25 numerous text messages from Patient A's phone that were to and from Respondent,
26 mainly from April 2015 to March 2016.
- 27 E. Respondent spent time with Patient A at parks and at her home. Respondent and
28 Patient A also met for coffee and lunches.

1 F. Respondent had feelings for Patient A and "should have ended their relationship a
2 long time ago."

3 G. The oncologist-patient relationship is one where the patient is exceptionally
4 vulnerable. Respondent's conduct is an egregious example of a physician taking
5 advantage of a vulnerable patient whom he was treating for a life-threatening
6 condition.

7 H. Respondent committed unprofessional conduct pursuant to RCW 18.130.180(4).

8 10. Through the Agreed Order Respondent agreed to a five thousand dollars (\$5,000.00)
9 fine and certain terms and conditions placed on Respondent's license to practice medicine in the
10 state of Washington. Those terms and conditions included restricting Respondent from engaging
11 "in talk of a sexual nature with patients, except as necessary in the treatment of that patient" and
12 limiting Respondent's treatment to "only male patients upon his return to clinical practice, unless
13 treating a patient for a bona-fide emergency or when on call for his practice group or clinic." The
14 Washington Board ordered that at the end of four (4) years, Respondent could petition in writing
15 to terminate the Agreed Order.

16 11. The above action by the Washington Board regarding Respondent's license to
17 practice medicine, as set forth above, constitutes cause for disciplinary action and/or
18 unprofessional conduct within the meaning of sections 141 and/or 2305 of the Code. Therefore,
19 cause for discipline exists.

20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Medical Board of California issue a decision:

23 1. Revoking or suspending Physician's and Surgeon's Certificate Number A 80174,
24 issued to Andrew Lewis Kominsky, M.D.;


25 2. Revoking, suspending or denying approval of Andrew Lewis Kominsky, M.D.'s
26 authority to supervise physician assistants and advanced practice nurses;

27 3. Ordering Andrew Lewis Kominsky, M.D., if placed on probation, to pay the Board
28 the costs of probation monitoring; and

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4. Taking such other and further action as deemed necessary and proper.

DATED: August 27, 2018


KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

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EXHIBIT A



STATE OF WASHINGTON
DEPARTMENT OF HEALTH
Olympia, Washington 98504

RE: Andrew L. Kominsly, MD
Master Case No.: M2017-52
Document: Agreed Order

Regarding your request for information about the above-named practitioner; attached is a true and correct copy of the document on file with the State of Washington, Department of Health, Adjudicative Clerk Office. These records are considered Certified by the Department of Health.

Certain information may have been withheld pursuant to Washington state laws. While those laws require that most records be disclosed on request, they also state that certain information should not be disclosed.

The following information has been withheld: **NONE**

If you have any questions or need additional information regarding the information that was withheld, please contact:

Customer Service Center
P.O. Box 47865
Olympia, WA 98504-7865
Phone: (360) 236-4700
Fax: (360) 586-2171

You may appeal the decision to withhold any information by writing to the Privacy Officer, Department of Health, P.O. Box 47890, Olympia, WA 98504-7890.

**STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice
as a Physician and Surgeon of:

ANDREW L. KOMINSKY, MD
License No. MD.00046940

Respondent

No. M2017-52

**STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
AGREED ORDER**

The Medical Quality Assurance Commission (Commission), through Ariele Page Landstrom, Commission Staff Attorney, and Respondent, represented by counsel, John C. Peick, stipulate and agree to the following.

1. PROCEDURAL STIPULATIONS

1.1 On January 12, 2017, the Commission issued a Statement of Charges against Respondent.

1.2 In the Statement of Charges, the Commission alleges that Respondent violated RCW 18.130.180(4).

1.3 The Commission is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.4 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.5 The Commission has the authority to impose sanctions pursuant to RCW 18.130.160 if the allegations are proven at a hearing.

1.6 The parties agree to resolve this matter by means of this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order (Agreed Order).

1.7 Respondent waives the opportunity for a hearing on the Statement of Charges if the Commission accepts this Agreed Order.

1.8 This Agreed Order is not binding unless it is accepted and signed by the Commission.

1.9 If the Commission accepts this Agreed Order, it will be reported to the National Practitioner Data Bank (45 CFR Part 60), the Federation of State Medical Boards' Physician Data Center and elsewhere as required by law.

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND AGREED ORDER
NO. M2017-52

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1.10 This Agreed Order is a public document. It will be placed on the Department of Health's website, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). It may be disclosed to the public upon request pursuant to the Public Records Act (Chapter 42.56 RCW). It will remain part of Respondent's file according to the state's records retention law and cannot be expunged.

1.11 If the Commission rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order presentation.

2. FINDINGS OF FACT

Respondent and the Commission acknowledge that the evidence is sufficient to justify the following findings, and the Commission makes the following findings of fact.

2.1 On August 8, 2006, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is board certified in internal medicine with subspecialties in oncology and hematology.

2.2 In 2011, Patient A, a 28-year-old woman, was diagnosed with metastatic stage 4 breast cancer. Respondent was Patient A's primary oncologist beginning in 2011, until she entered hospice after a relapse in late 2015. Patient A died in April 2016.

2.3 Shortly after Patient A's death, the person serving as Patient A's durable power of attorney reported to Respondent's employer, a hospital, that Patient A's phone contained text messages and voicemails to and from the Respondent. Many of the messages contained sexually suggestive and explicit language. The messages also expose multiple meetings outside the clinical setting. One text message references being "showered with gifts." The hospital conducted an investigation and terminated Respondent on May 10, 2016.

2.4 Respondent admits that from 2013 to 2015, he had an inappropriate relationship with Patient A.

2.5 Respondent admits talking to Patient A through text messages and admits that many of the text messages were flirtatious and contained sexual content. The

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hospital collected numerous text messages from Patient A's phone that were to and from Respondent, mainly from April 2015 to March 2016.

2.6 Respondent admits to spending time with Patient A at parks and at her home. Respondent also admits that they met for coffee and lunches.

2.7 Respondent admits he had feelings for Patient A and "should have ended their relationship a long time ago."

2.8 The oncologist-patient relationship is one where the patient is exceptionally vulnerable. Respondent's conduct is an egregious example of a physician taking advantage of a vulnerable patient whom he was treating for a life-threatening condition.

3. CONCLUSIONS OF LAW

The Commission and Respondent agree to the entry of the following Conclusions of Law.

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct in violation of RCW 18.130.180(4).

3.3 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

4. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order.

4.1 Compliance Orientation. Respondent must complete a compliance orientation in person or by telephone within sixty (60) days of the effective date of this Agreed Order. Respondent must contact the Compliance Unit at the Commission by calling 360-236-2763, or by sending an email to: Medical.compliance@doh.wa.gov within twenty (20) days of the effective date of this Agreed Order. Respondent must provide a contact phone number where Respondent can be reached for scheduling purposes.

4.2 Establishment/Maintenance of Boundaries. Respondent must set and maintain appropriate boundaries with patients, including the following:

4.2.1 Respondent must see patients only during normal business hours and only within a clinical setting.

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND AGREED ORDER
NO. M2017-52

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4.2.2 Respondent must not engage in talk of a sexual nature with patients, except as necessary in the treatment of that patient.

4.2.3 Respondent must not communicate with patients via text messaging, instant messaging, e-mail, or other electronic forms of communication, and adhere to the Commission's Guidelines on Professionalism and Electronic Media.

4.2.4 Respondent must not have social contact with patients. For the purposes of this Agreed Order, "social contact" includes going on a date, having a meal, attending a party, or attending other non-structured events at which people are gathered; it does not include attending a meeting at which a patient may be present.

4.2.5 Respondent must not treat individuals with whom he has had a social relationship. For the purposes of this Agreed Order, "social relationship" includes a friendship or someone Respondent frequently encounters in social situations.

4.2.6 Respondent must not accept gifts from patients, nor give gifts to them.

4.2.7 Respondent must not disclose personal information about himself to patients, other than that which relates to his professional qualifications.

4.2.8 Respondent must not make house calls unless he receives specific written permission from the Commission.

4.3 **Practice Setting/Patient Criteria.** Respondent must notify the Commission, in writing, within ten (10) days of beginning of any new employment.

4.3.1 Respondent may practice only in an employed situation; he may not practice in a private practice or other situation where he is not an employee.

4.3.2 Respondent may treat only male patients upon his return to clinical practice, unless treating a patient for a bona-fide emergency or when on call for his practice group or clinic. Respondent must document any emergency or on-call encounters and submit a copy of the medical record for any emergency or on-call encounters to the Commission.

4.3.3 Respondent may petition the Commission, in writing, to terminate the provision regarding his exclusive treatment of male patients. In order to petition, Respondent must also submit, in writing, the unequivocal endorsement from the

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psychotherapist approved by the Commission required by paragraph 4.5 of this Agreed Order that he can safely resume providing care to female patients without risk of inappropriate social, romantic, or sexual behavior or activities. When Respondent files such a petition, the Commission will require Respondent to appear for a modification hearing, unless the Commission waives the appearance, and may impose additional terms or sanctions it deems necessary to protect the public. The Commission has sole discretion to grant or deny Respondent's petition.

4.4. **Personal Appearances.** Respondent must personally appear before the Commission in approximately six (6) months of the effective date of this Agreed Order, or as soon thereafter as the Commission's schedule permits. Respondent must participate in a brief telephone call with the Commission's Compliance Unit prior to his appearance. The purpose of appearances is to provide meaningful oversight of Respondent's compliance with the requirements of this Agreed Order. Respondent should be prepared to demonstrate ongoing affirmative conduct and compliance with this Agreed Order to the Commission. Thereafter, Respondent must make personal appearances annually, or as frequently as the Commission otherwise requires, with one appearance occurring near the end of the four-year Agreed Order duration, unless the Commission waives the need for any appearance. Dates and locations of appearances will be determined by the Commission.

4.5 **Psychotherapy Sessions.** Respondent must attend weekly psychotherapy sessions with a psychotherapist approved in advance by the Commission. Respondent must comply with any recommendations by the psychotherapist to increase the frequency of psychotherapy sessions to more than once per week.

4.5.1 The psychotherapy sessions must foster stress management, emotion regulation skills, and continuing the development of his interpersonal/relationship and communication skills. Specific areas of emphasis must include: recognition and implementation of appropriate boundaries with others, both patients and nonpatients; adaptive versus maladaptive grieving, including grieving of terminal patients being treated by Respondent; and general stress management to avoid displaced anger, anxiety, and personal need satisfaction.

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4.5.2 Any change in psychotherapist must be approved in advance by the Commission. Any reduction in the frequency of psychotherapy sessions must be recommended by the psychotherapist and approved in advance by the Commission. Respondent must cause the psychotherapist to: (1) submit quarterly reports to the Commission addressing the areas described in paragraph 4.5.1 and informing the Commission of any recommendation to change the frequency of the psychotherapy sessions; and (2) immediately notify the Commission if the psychotherapist has concerns about Respondent's ability to maintain appropriate boundaries with patients or to otherwise practice safely.

4.5.3 Respondent may petition, in writing, to terminate the psychotherapy requirements of this paragraph 4.5 no sooner than three (3) years from the effective date of this Agreed Order. The Commission has sole discretion to grant or deny Respondent's petition and may impose additional conditions, if necessary, to protect the public. The Commission will issue a notice indicating a date and time for the Respondent to appear, unless the Commission waives the need for an appearance.

4.6 Peer Consultations. Respondent must meet with a peer consultant a minimum of twice each month regarding his conduct with patients. Respondent may not reduce the frequency of these consultations unless endorsed, in writing, by the peer consultant and approved by the Commission.

4.6.1 The peer consultant must be a board-certified oncologist, approved in advance by the Commission. Any change in peer consultant must be approved in advance by the Commission. Respondent must cause the peer consultant to: (1) submit quarterly reports to the Commission addressing Respondent's ability to maintain appropriate boundaries with patients and others; and (2) immediately notify the Commission if the peer consultant has concerns about Respondent's ability to maintain appropriate boundaries with patients or otherwise be able to practice safely.

4.6.2 Respondent may petition, in writing, to terminate the requirements of this paragraph 4.6 no sooner than two (2) years from the effective date of this Agreed Order. The Commission has sole discretion to grant or deny Respondent's

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petition. The Commission will issue a notice indicating a date and time for the Respondent to appear, unless the Commission waives the need for an appearance.

4.7 Professional Boundaries Course. Within three (3) months of the effective date of this Agreed Order, Respondent must attend and successfully complete a professional boundaries course approved by the Commission or a Commission designee. Respondent must provide the course instructors with a copy of this Agreed Order prior to the course. Respondent must sign all necessary waivers to allow the Commission staff to communicate with the course instructors as needed. Respondent must submit proof of the satisfactory completion of the course to the Commission within one (1) month of completion. If the course requires Respondent to complete a written report, Respondent must ensure that the Commission receives a copy of that report. The Commission pre-approves the following courses: The Professional Boundaries course offered by Professional Boundaries, Inc. (PBI); the Medical Ethics, Boundaries, and Professionalism course offered by Case Western Reserve University; and the Professional Problem-Based Ethics (ProBE) program offered by The Center for Personalized Education for Physicians (CPEP), so long as Respondent obtains an "unconditional pass" rating at the conclusion of the course.

4.8 Paper. Respondent must research and write a scholarly paper addressing the physician-patient relationship in the context of oncology. The paper must address: the unique nature of the oncologist-patient relationship; the inherent vulnerability of cancer patients, particularly patients with advanced stage cancer; and the importance of maintaining proper boundaries in the oncologist-patient relationship; and how Respondent will implement the knowledge he has gained to prevent future episodes of sexual misconduct or boundary crossing. The paper must be typewritten, a minimum of one thousand five hundred (1,500) words, contain an annotated bibliography, and state the importance of integrating the principles discussed in Respondent's paper into his practice. Respondent should be prepared to discuss his paper with the Commission at his initial personal appearance before the Commission. The paper must be submitted to the Commission for approval within six (6) months of the effective date of this Agreed Order.

4.9 Presentation. Within nine (9) months from the date of Respondent's initial personal appearance before the Commission, Respondent must present his paper

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to his practice group, or other group of physicians approved by the Commission, and submit proof of the presentation to the Commission for approval. The proof must include any presentation materials, a declaration that lists the date and time of the presentation, and the signatures of participants.

4.10 **Notification of Agreed Order.** Respondent must provide a copy of this Agreed Order to any: facility, clinic, or program at which he practices medicine, or has privileges or any other kind of association; state agency, in or out-of-state, with which he has a provider contract; medical employer, regardless of whether Respondent is practicing medicine; and, if practicing out-of-state, state authority with which Respondent has any kind of license to practice medicine. Respondent must notify the Commission, in writing, of any employment or change in employment in the health care field. The notification must be made **within thirty (30) days** of the employment or change in employment and must include the complete new address and telephone number. Respondent must also provide copies of this Agreed Order to the psychotherapist and peer consultant required by this Agreed Order.

4.11 **Fine.** Respondent must pay a fine to the Commission in the amount of five thousand dollars (\$5,000.00). Respondent must pay the fine **within six (6) months** of the effective date of this Agreed Order. The Respondent must pay the fine by certified or cashier's check or money order, made payable to:

Department of Health
Medical Quality Assurance Commission
P.O. Box 1099
Olympia, Washington 98507-1099 -

4.12 **Submission of Documents.** The quarterly reports required by this Agreed Order must be submitted to the Commission on the **first day of January, April, July, and October** each year this Agreed Order is in effect. All documents required by this Agreed Order must be submitted to the Commission, in both electronic and printed format, to the respective addresses below:

1. Medical.compliance@doh.wa.gov
2. Compliance Officer
Medical Quality Assurance Commission
P.O. Box 47866
Olympia, Washington 98504-7866

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4.13 **Obey all laws.** Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

4.14 **Compliance Costs.** Respondent is responsible for all costs of complying with this Agreed Order.

4.15 **Violation of Order.** If Respondent violates any provision of this Agreed Order in any respect, the Commission may initiate further action against Respondent's license.

4.16 **Change of Address.** Respondent must inform the Commission and the Adjudicative Clerk Office, in writing, of changes in Respondent's residential and/or business address within thirty (30) days of the change.

4.17 **Effective Date of Order.** The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent must not submit any fees or compliance documents until after the effective date of this Agreed Order.

4.18 **Termination.** Respondent may petition the Commission in writing to terminate this Agreed Order no sooner than four (4) years after the effective date of this Agreed Order. The Commission will issue a notice indicating a date and time for the Respondent to appear, unless the Commission waives the need for an appearance.

5. COMPLIANCE WITH SANCTION RULES

5.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. Tier B of the "Practice Below Standard of Care" schedule, WAC 246-16-810, applies to cases involving substandard practices that caused moderate patient harm or risk of moderate patient harm. Respondent's crossing of patient boundaries caused moderate patient harm or risk of moderate to severe patient harm. If boundaries are ignored, as they were for more than two years, the physician's ability to act objectively in the patient's best interest, is compromised. Risk of harm is inherent in boundary crossings. In a setting where the patient is a stage 4 cancer patient, the vulnerability of the patient magnifies the obligation of the physician to maintain appropriate boundaries. Therefore, Tier B applies to this case.

5.2 Tier B requires the imposition of sanctions ranging from two-to-five years of oversight, unless revocation. Under WAC 246-16-800(3)(d), the starting point for the

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duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

5.3 This Agreed Order imposes a minimum of four (4) years of oversight, which is at the middle-upper end of the range. This period of oversight is appropriate given the balance of the following aggravating and mitigating factors:

5.3.1 It is aggravating that Respondent abused the trust of Patient A by engaging in an inappropriate personal relationship with her for at least two (2) years. It is also aggravating that Patient A was a vulnerable stage 4 cancer patient.

5.3.2 It is mitigating that Respondent cooperated with the Commission's investigation.

5.4 The sanctions in this case include boundary guidelines, criteria for return to practice, psychotherapy, peer consultation, a professional boundaries course, a paper on the oncologist/patient relationship, a presentation, boundary standards, quarterly reports, personal appearances before the Commission, and a fine. These measures will ensure that the public is adequately protected.

6. FAILURE TO COMPLY

Protection of the public requires practice under the terms and conditions imposed in this Agreed Order. Failure to comply with the terms and conditions of this Agreed Order may result in suspension of the license after a show cause hearing. If Respondent fails to comply with the terms and conditions of this Agreed Order, the Commission may hold a hearing to require Respondent to show cause why the license should not be suspended. Alternatively, the Commission may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, Respondent will be afforded notice and an opportunity for a hearing on the issue of non-compliance.

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7. RESPONDENT'S ACCEPTANCE

I, Andrew L. Kominsky, MD, Respondent, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Commission without my appearance. I understand that I will receive a signed copy if the Commission accepts this Agreed Order.



ANDREW L. KOMINSKY, MD
RESPONDENT

DATE

3/9/18



JOHN D. PEICK, WSBA NO. 6249
ATTORNEY FOR RESPONDENT

DATE

3/9/2018

8. COMMISSION'S ACCEPTANCE AND ORDER

The Commission accepts and enters this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order.

DATED: _____

March 14,

2018.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION



PANEL CHAIR

PRESENTED BY:



ARIELE PAGE LANDSTRO
COMMISSION STAFF ATTORNEY

38357

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NO. M2017-52

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**STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION**

In the Matter of the License to Practice
as a Physician and Surgeon of:

ANDREW L. KOMINSKY, MD
License No. MD.00046940

Respondent.

No. M2017-52

**STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
AGREED ORDER**

The Medical Quality Assurance Commission (Commission), through Ariele Page Landstrom, Commission Staff Attorney, and Respondent, represented by counsel, John C. Peick, stipulate and agree to the following.

1. PROCEDURAL STIPULATIONS

1.1 On January 12, 2017, the Commission issued a Statement of Charges against Respondent.

1.2 In the Statement of Charges, the Commission alleges that Respondent violated RCW 18.130.180(4).

1.3 The Commission is prepared to proceed to a hearing on the allegations in the Statement of Charges.

1.4 Respondent has the right to defend against the allegations in the Statement of Charges by presenting evidence at a hearing.

1.5 The Commission has the authority to impose sanctions pursuant to RCW 18.130.160 if the allegations are proven at a hearing.

1.6 The parties agree to resolve this matter by means of this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order (Agreed Order).

1.7 Respondent waives the opportunity for a hearing on the Statement of Charges if the Commission accepts this Agreed Order.

1.8 This Agreed Order is not binding unless it is accepted and signed by the Commission.

1.9 If the Commission accepts this Agreed Order, it will be reported to the National Practitioner Data Bank (45 CFR Part 60), the Federation of State Medical Boards' Physician Data Center and elsewhere as required by law.

STIPULATED FINDINGS OF FACT,
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NO. M2017-52

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1.10 This Agreed Order is a public document. It will be placed on the Department of Health's website, disseminated via the Commission's electronic mailing list, and disseminated according to the Uniform Disciplinary Act (Chapter 18.130 RCW). It may be disclosed to the public upon request pursuant to the Public Records Act (Chapter 42.56 RCW). It will remain part of Respondent's file according to the state's records retention law and cannot be expunged.

1.11 If the Commission rejects this Agreed Order, Respondent waives any objection to the participation at hearing of any Commission members who heard the Agreed Order presentation.

2. FINDINGS OF FACT

Respondent and the Commission acknowledge that the evidence is sufficient to justify the following findings, and the Commission makes the following findings of fact.

2.1 On August 8, 2006, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is board certified in internal medicine with subspecialties in oncology and hematology.

2.2 In 2011, Patient A, a 28-year-old woman, was diagnosed with metastatic stage 4 breast cancer. Respondent was Patient A's primary oncologist beginning in 2011, until she entered hospice after a relapse in late 2015. Patient A died in April 2016.

2.3 Shortly after Patient A's death, the person serving as Patient A's durable power of attorney reported to Respondent's employer, a hospital, that Patient A's phone contained text messages and voicemails to and from the Respondent. Many of the messages contained sexually suggestive and explicit language. The messages also expose multiple meetings outside the clinical setting. One text message references being "showered with gifts." The hospital conducted an investigation and terminated Respondent on May 10, 2016.

2.4 Respondent admits that from 2013 to 2015, he had an inappropriate relationship with Patient A.

2.5 Respondent admits talking to Patient A through text messages and admits that many of the text messages were flirtatious and contained sexual content. The

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hospital collected numerous text messages from Patient A's phone that were to and from Respondent, mainly from April 2015 to March 2016.

2.6 Respondent admits to spending time with Patient A at parks and at her home. Respondent also admits that they met for coffee and lunches.

2.7 Respondent admits he had feelings for Patient A and "should have ended their relationship a long time ago."

2.8 The oncologist-patient relationship is one where the patient is exceptionally vulnerable. Respondent's conduct is an egregious example of a physician taking advantage of a vulnerable patient whom he was treating for a life-threatening condition.

3. CONCLUSIONS OF LAW

The Commission and Respondent agree to the entry of the following Conclusions of Law.

3.1 The Commission has jurisdiction over Respondent and over the subject matter of this proceeding.

3.2 Respondent has committed unprofessional conduct in violation of RCW 18.130.180(4).

3.3 The above violations provide grounds for imposing sanctions under RCW 18.130.160.

4. AGREED ORDER

Based on the Findings of Fact and Conclusions of Law, Respondent agrees to entry of the following Agreed Order.

4.1 Compliance Orientation. Respondent must complete a compliance orientation in person or by telephone within sixty (60) days of the effective date of this Agreed Order. Respondent must contact the Compliance Unit at the Commission by calling 360-236-2763, or by sending an email to: Medical.compliance@doh.wa.gov within twenty (20) days of the effective date of this Agreed Order. Respondent must provide a contact phone number where Respondent can be reached for scheduling purposes.

4.2 Establishment/Maintenance of Boundaries. Respondent must set and maintain appropriate boundaries with patients, including the following:

4.2.1 Respondent must see patients only during normal business hours and only within a clinical setting.

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND AGREED ORDER
NO. M2017-52

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4.2.2 Respondent must not engage in talk of a sexual nature with patients, except as necessary in the treatment of that patient.

4.2.3 Respondent must not communicate with patients via text messaging, instant messaging, e-mail, or other electronic forms of communication, and adhere to the Commission's Guidelines on Professionalism and Electronic Media.

4.2.4 Respondent must not have social contact with patients. For the purposes of this Agreed Order, "social contact" includes going on a date, having a meal, attending a party, or attending other non-structured events at which people are gathered; it does not include attending a meeting at which a patient may be present.

4.2.5 Respondent must not treat individuals with whom he has had a social relationship. For the purposes of this Agreed Order, "social relationship" includes a friendship or someone Respondent frequently encounters in social situations.

4.2.6 Respondent must not accept gifts from patients, nor give gifts to them.

4.2.7 Respondent must not disclose personal information about himself to patients, other than that which relates to his professional qualifications.

4.2.8 Respondent must not make house calls unless he receives specific written permission from the Commission.

4.3 Practice Setting/Patient Criteria. Respondent must notify the Commission, in writing, within ten (10) days of beginning of any new employment.

4.3.1 Respondent may practice only in an employed situation; he may not practice in a private practice or other situation where he is not an employee.

4.3.2 Respondent may treat only male patients upon his return to clinical practice, unless treating a patient for a bona-fide emergency or when on call for his practice group or clinic. Respondent must document any emergency or on-call encounters and submit a copy of the medical record for any emergency or on-call encounters to the Commission.

4.3.3 Respondent may petition the Commission, in writing, to terminate the provision regarding his exclusive treatment of male patients. In order to petition, Respondent must also submit, in writing, the unequivocal endorsement from the

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psychotherapist approved by the Commission required by paragraph 4.5 of this Agreed Order that he can safely resume providing care to female patients without risk of inappropriate social, romantic, or sexual behavior or activities. When Respondent files such a petition, the Commission will require Respondent to appear for a modification hearing, unless the Commission waives the appearance, and may impose additional terms or sanctions it deems necessary to protect the public. The Commission has sole discretion to grant or deny Respondent's petition.

4.4 Personal Appearances. Respondent must personally appear before the Commission in approximately six (6) months of the effective date of this Agreed Order, or as soon thereafter as the Commission's schedule permits. Respondent must participate in a brief telephone call with the Commission's Compliance Unit prior to his appearance. The purpose of appearances is to provide meaningful oversight of Respondent's compliance with the requirements of this Agreed Order. Respondent should be prepared to demonstrate ongoing affirmative conduct and compliance with this Agreed Order to the Commission. Thereafter, Respondent must make personal appearances annually, or as frequently as the Commission otherwise requires, with one appearance occurring near the end of the four-year Agreed Order duration, unless the Commission waives the need for any appearance. Dates and locations of appearances will be determined by the Commission.

4.5 Psychotherapy Sessions. Respondent must attend weekly psychotherapy sessions with a psychotherapist approved in advance by the Commission. Respondent must comply with any recommendations by the psychotherapist to increase the frequency of psychotherapy sessions to more than once per week.

4.5.1 The psychotherapy sessions must foster stress management, emotion regulation skills, and continuing the development of his interpersonal/relationship and communication skills. Specific areas of emphasis must include: recognition and implementation of appropriate boundaries with others, both patients and nonpatients; adaptive versus maladaptive grieving, including grieving of terminal patients being treated by Respondent; and general stress management to avoid displaced anger, anxiety, and personal need satisfaction.

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4.5.2 Any change in psychotherapist must be approved in advance by the Commission. Any reduction in the frequency of psychotherapy sessions must be recommended by the psychotherapist and approved in advance by the Commission. Respondent must cause the psychotherapist to: (1) submit quarterly reports to the Commission addressing the areas described in paragraph 4.5.1 and informing the Commission of any recommendation to change the frequency of the psychotherapy sessions; and (2) immediately notify the Commission if the psychotherapist has concerns about Respondent's ability to maintain appropriate boundaries with patients or to otherwise practice safely.

4.5.3 Respondent may petition, in writing, to terminate the psychotherapy requirements of this paragraph 4.5 no sooner than three (3) years from the effective date of this Agreed Order. The Commission has sole discretion to grant or deny Respondent's petition and may impose additional conditions, if necessary, to protect the public. The Commission will issue a notice indicating a date and time for the Respondent to appear, unless the Commission waives the need for an appearance.

4.6 Peer Consultations. Respondent must meet with a peer consultant a minimum of twice each month regarding his conduct with patients. Respondent may not reduce the frequency of these consultations unless endorsed, in writing, by the peer consultant and approved by the Commission.

4.6.1 The peer consultant must be a board-certified oncologist, approved in advance by the Commission. Any change in peer consultant must be approved in advance by the Commission. Respondent must cause the peer consultant to: (1) submit quarterly reports to the Commission addressing Respondent's ability to maintain appropriate boundaries with patients and others; and (2) immediately notify the Commission if the peer consultant has concerns about Respondent's ability to maintain appropriate boundaries with patients or otherwise be able to practice safely.

4.6.2 Respondent may petition, in writing, to terminate the requirements of this paragraph 4.6 no sooner than two (2) years from the effective date of this Agreed Order. The Commission has sole discretion to grant or deny Respondent's

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petition. The Commission will issue a notice indicating a date and time for the Respondent to appear, unless the Commission waives the need for an appearance.

4.7 Professional Boundaries Course. Within three (3) months of the effective date of this Agreed Order, Respondent must attend and successfully complete a professional boundaries course approved by the Commission or a Commission designee. Respondent must provide the course instructors with a copy of this Agreed Order prior to the course. Respondent must sign all necessary waivers to allow the Commission staff to communicate with the course instructors as needed. Respondent must submit proof of the satisfactory completion of the course to the Commission within one (1) month of completion. If the course requires Respondent to complete a written report, Respondent must ensure that the Commission receives a copy of that report. The Commission pre-approves the following courses: The Professional Boundaries course offered by Professional Boundaries, Inc. (PBI); the Medical Ethics, Boundaries, and Professionalism course offered by Case Western Reserve University; and the Professional Problem-Based Ethics (ProBE) program offered by The Center for Personalized Education for Physicians (CPEP), so long as Respondent obtains an "unconditional pass" rating at the conclusion of the course.

4.8 Paper. Respondent must research and write a scholarly paper addressing the physician-patient relationship in the context of oncology. The paper must address: the unique nature of the oncologist-patient relationship; the inherent vulnerability of cancer patients, particularly patients with advanced stage cancer; and the importance of maintaining proper boundaries in the oncologist-patient relationship; and how Respondent will implement the knowledge he has gained to prevent future episodes of sexual misconduct or boundary crossing. The paper must be typewritten, a minimum of one thousand five hundred (1,500) words, contain an annotated bibliography, and state the importance of integrating the principles discussed in Respondent's paper into his practice. Respondent should be prepared to discuss his paper with the Commission at his initial personal appearance before the Commission. The paper must be submitted to the Commission for approval within six (6) months of the effective date of this Agreed Order.

4.9 Presentation. Within nine (9) months from the date of Respondent's initial personal appearance before the Commission, Respondent must present his paper

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to his practice group, or other group of physicians approved by the Commission, and submit proof of the presentation to the Commission for approval. The proof must include any presentation materials, a declaration that lists the date and time of the presentation, and the signatures of participants.

4.10 **Notification of Agreed Order.** Respondent must provide a copy of this Agreed Order to any: facility, clinic, or program at which he practices medicine, or has privileges or any other kind of association; state agency, in or out-of-state, with which he has a provider contract; medical employer, regardless of whether Respondent is practicing medicine; and, if practicing out-of-state, state authority with which Respondent has any kind of license to practice medicine. Respondent must notify the Commission, in writing, of any employment or change in employment in the health care field. The notification must be made within **thirty (30) days** of the employment or change in employment and must include the complete new address and telephone number. Respondent must also provide copies of this Agreed Order to the psychotherapist and peer consultant required by this Agreed Order.

4.11 **Fine.** Respondent must pay a fine to the Commission in the amount of five thousand dollars (\$5,000.00). Respondent must pay the fine **within six (6) months** of the effective date of this Agreed Order. The Respondent must pay the fine by certified or cashier's check or money order, made payable to:

Department of Health
Medical Quality Assurance Commission
P.O. Box 1099
Olympia, Washington 98507-1099 -

4.12 **Submission of Documents.** The quarterly reports required by this Agreed Order must be submitted to the Commission on the **first day of January, April, July, and October** each year this Agreed Order is in effect. All documents required by this Agreed Order must be submitted to the Commission, in both electronic and printed format, to the respective addresses below:

1. Medical.compliance@doh.wa.gov
2. Compliance Officer
Medical Quality Assurance Commission
P.O. Box 47866
Olympia, Washington 98504-7866

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4.13 **Obey all laws.** Respondent must obey all federal, state and local laws and all administrative rules governing the practice of the profession in Washington.

4.14 **Compliance Costs.** Respondent is responsible for all costs of complying with this Agreed Order.

4.15 **Violation of Order.** If Respondent violates any provision of this Agreed Order in any respect, the Commission may initiate further action against Respondent's license.

4.16 **Change of Address.** Respondent must inform the Commission and the Adjudicative Clerk Office, in writing, of changes in Respondent's residential and/or business address within thirty (30) days of the change.

4.17 **Effective Date of Order.** The effective date of this Agreed Order is the date the Adjudicative Clerk Office places the signed Agreed Order into the U.S. mail. If required, Respondent must not submit any fees or compliance documents until after the effective date of this Agreed Order.

4.18 **Termination.** Respondent may petition the Commission in writing to terminate this Agreed Order no sooner than four (4) years after the effective date of this Agreed Order. The Commission will issue a notice indicating a date and time for the Respondent to appear, unless the Commission waives the need for an appearance.

5. COMPLIANCE WITH SANCTION RULES

5.1 The Commission applies WAC 246-16-800, *et seq.*, to determine appropriate sanctions. Tier B of the "Practice Below Standard of Care" schedule, WAC 246-16-810, applies to cases involving substandard practices that caused moderate patient harm or risk of moderate patient harm. Respondent's crossing of patient boundaries caused moderate patient harm or risk of moderate to severe patient harm. If boundaries are ignored, as they were for more than two years, the physician's ability to act objectively in the patient's best interest, is compromised. Risk of harm is inherent in boundary crossings. In a setting where the patient is a stage 4 cancer patient, the vulnerability of the patient magnifies the obligation of the physician to maintain appropriate boundaries. Therefore, Tier B applies to this case.

5.2 Tier B requires the imposition of sanctions ranging from two-to-five years of oversight, unless revocation. Under WAC 246-16-800(3)(d), the starting point for the

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duration of the sanctions is the middle of the range. The Commission uses aggravating and mitigating factors to move towards the maximum or minimum ends of the range.

5.3 This Agreed Order imposes a minimum of four (4) years of oversight, which is at the middle-upper end of the range. This period of oversight is appropriate given the balance of the following aggravating and mitigating factors:

5.3.1 It is aggravating that Respondent abused the trust of Patient A by engaging in an inappropriate personal relationship with her for at least two (2) years. It is also aggravating that Patient A was a vulnerable stage 4 cancer patient.

5.3.2 It is mitigating that Respondent cooperated with the Commission's investigation.

5.4 The sanctions in this case include boundary guidelines, criteria for return to practice, psychotherapy, peer consultation, a professional boundaries course, a paper on the oncologist/patient relationship, a presentation, boundary standards, quarterly reports, personal appearances before the Commission, and a fine. These measures will ensure that the public is adequately protected.

6. FAILURE TO COMPLY

Protection of the public requires practice under the terms and conditions imposed in this Agreed Order. Failure to comply with the terms and conditions of this Agreed Order may result in suspension of the license after a show cause hearing. If Respondent fails to comply with the terms and conditions of this Agreed Order, the Commission may hold a hearing to require Respondent to show cause why the license should not be suspended. Alternatively, the Commission may bring additional charges of unprofessional conduct under RCW 18.130.180(9). In either case, Respondent will be afforded notice and an opportunity for a hearing on the issue of non-compliance.

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7. RESPONDENT'S ACCEPTANCE

I, Andrew L. Kominsky, MD, Respondent, have read, understand and agree to this Agreed Order. This Agreed Order may be presented to the Commission without my appearance. I understand that I will receive a signed copy if the Commission accepts this Agreed Order.



ANDREW L. KOMINSKY, MD
RESPONDENT

DATE

3/9/18



JOHN C. PEICK, WSBA NO. 6249
ATTORNEY FOR RESPONDENT

DATE

3/9/2018

8. COMMISSION'S ACCEPTANCE AND ORDER

The Commission accepts and enters this Stipulated Findings of Fact, Conclusions of Law, and Agreed Order.

DATED: _____

March 14,

2018.



STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION



PANEL CHAIR

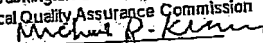
PRESENTED BY:



ARIELE PAGE LANDSTRO
COMMISSION STAFF ATTORNEY

38357

I declare that this is a true and accurate copy of the original on file with the Washington State Department of Health, Medical Quality Assurance Commission



Michael J. Kramer

Date

6-15-18

STIPULATED FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND AGREED ORDER
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STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION

FILED

MAR 30 2017

In the Matter of the License to Practice
as a Physician and Surgeon of:

No. M2017-52

Adjudicative Clerk Office

ANDREW L. KOMINSKY, MD
License No. MD00046940

STATEMENT OF CHARGES

Respondent.

The Executive Director of the Medical Quality Assurance Commission (Commission) is authorized to make the allegations below, which are supported by the evidence contained in file numbers 2016-4563 AND 2016-6722. *The patient referred to in this Statement of Charges is identified in the attached Confidential Schedule.*

1. ALLEGED FACTS

1.1 On August 8, 2006, the state of Washington issued Respondent a license to practice as a physician and surgeon. Respondent's license is currently active. Respondent is board certified in internal medicine with subspecialties in oncology and hematology.

1.2 In 2011, Patient A, a 28-year-old woman, was diagnosed with metastatic stage 4 breast cancer. Respondent was Patient A's primary oncologist beginning in 2011, until she entered hospice after a relapse in late 2015. Patient A also volunteered at the hospital where she received treatment. Patient A died in April 2016.

1.3 Shortly after Patient A's death, the person serving as Patient A's durable power of attorney reported to Respondent's employer, a hospital, that Respondent had been involved in a long-term sexual relationship with Patient A.

1.4 The hospital obtained numerous text and voicemail messages from Patient A's phone. The messages were to and from Respondent, mainly from April 2015 to March 2016. The hospital conducted an investigation and concluded that it was clearly evident that the relationship between Respondent and Patient A was of a sexual nature. The hospital terminated Respondent's employment on May 10, 2016.

1.5 From early 2014 to March 2016, Respondent engaged in an inappropriate relationship with Patient A. Respondent violated proper boundaries with Patient A while

acting as her physician, including revealing personal information during medical appointments.

1.6 Respondent and Patient A exchanged text messages that were flirtatious, sexually suggestive, and sexually explicit. One text message between Respondent and Patient A references being "showered with gifts."

1.7 Respondent spent time with Patient A at parks and at her home where they carried on their relationship. Respondent and Patient A met for coffee and lunches. The text messages between Respondent and Patient A expose multiple meetings outside the clinical setting, with frequent discussion of finding secluded places to meet.

1.8 Respondent admits that he had feelings for Patient A and that he should have ended their relationship.

1.9 The oncologist-patient relationship is one where the patient is exceptionally vulnerable. Respondent's conduct is an egregious example of a physician taking advantage of a vulnerable patient whom he was treating for a life-threatening condition.

2. ALLEGED VIOLATIONS

2.1 Based on the Alleged Facts, Respondent has committed unprofessional conduct in violation of RCW 18.130.180 (1), (4), (7), (24) and WAC 246-919-630(2)(a), (b), (d), (e), (j), and (k) which provide in part:

RCW 18.130.180 Unprofessional conduct. The following conduct, acts, or conditions constitute unprofessional conduct for any license holder under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or

suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

...

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

...

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

...

(24) Abuse of a client or patient or sexual contact with a client or patient;

...

WAC 246-919-630 Sexual misconduct.

...

(2) A physician shall not engage in sexual misconduct with a current patient or a key third party. A physician engages in sexual misconduct when he or she engages in the following behaviors with a patient . . . :

(a) Sexual intercourse or genital to genital contact;

(b) Oral to genital contact;

...

(d) Kissing in a romantic or sexual manner;

(e) Touching breasts, genitals or any sexualized body part for any purpose other than appropriate examination or treatment;

...

(j) Soliciting a date;

(k) Engaging in a conversation regarding the sexual history, preferences or fantasies of the physician.

...

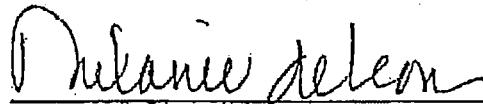
2.2 The above violation provides grounds for imposing sanctions under RCW 18.130.160.

3. NOTICE TO RESPONDENT

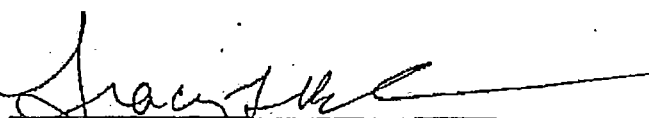
The charges in this document affect the public health, safety and welfare. The Executive Director of the Commission directs that a notice be issued and served on Respondent as provided by law, giving Respondent the opportunity to defend against these charges. If Respondent fails to defend against these charges, Respondent shall be subject to discipline and the imposition of sanctions under Chapter 18.130 RCW.

DATED: March 30, 2017.

STATE OF WASHINGTON
MEDICAL QUALITY ASSURANCE COMMISSION



MELANIE DE LEON
EXECUTIVE DIRECTOR

ROBERT W. FERGUSON
ATTORNEY GENERAL


TRACY BAHM, WSBA # 22950
ASSISTANT ATTORNEY GENERAL

I declare that this is a true and accurate copy of the original on file
with the Washington State Department of Health.

Medical Quality Assurance Commission


Michael J. Kramer

6-15-18
Date



CONFIDENTIAL SCHEDULE

This information is confidential and is NOT to be released without the consent of the individual or individuals named below. RCW 42.56.240(1)

Patient A